

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	09/367,052	KISHIMOTO ET AL.	
	Examiner	Art Unit	
	Zachariah Lucas	1648	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of December 12, 2005, and the interview of February 7, 2006.
2. ☒ The allowed claim(s) is/are 13,16,22 and 27-34.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br/>Paper No./Mail Date <u>1/31/06</u></li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date <u>2/7/06</u>.</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____.</li> </ol> |
|---|---|

## **DETAILED ACTION**

### ***Status of the Claims***

1. Currently, claims 13, 16, 22, 27-34 are pending and allowed.
2. In the prior action, mailed on September 12, 2005, claims 13, 16, 22, and 27-34 were pending and rejected. In response, submitted on December 12, 2005, the Applicant amended claims 13, 16, and 22.

### **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mark J, Nuell, Ph.D., on February 7, 2006.

The application has been amended as follows:

Claim 13 has been amended such that the phrase - - expressing heterologous hCD4 and- - was inserted between the terms "transformant" and "comprising" in line 6 of the claim.

The amendment was made to clarify that the cell being transformed in the method expresses both the heterologous hCD4 and mCXCr-4.

***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on January 31, 2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

***Claim Rejections - 35 USC § 101***

5. **(Prior Rejection- Withdrawn)** Claims 16, 22, 29, 30, and 32-34 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In view of the amendment of the claims to read on cells in culture or isolated form, the rejection is withdrawn.

***Claim Rejections - 35 USC § 112***

6. **(Prior Rejection- Withdrawn)** Claims 13, 16, 22, 31, and 34 were rejected in the prior action under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In the prior action, it was noted that an amendment of the claims to require that the nucleotide sequence that hybridizes to the complement of SEQ ID NO: 1 described in these claims would be allowable if limited to sequences isolated from murine cells. In view of the making of this amendment, the rejection is withdrawn.

7. **(Prior Rejection- Withdrawn)** Claims 13, 16, 22, 31, and 34 were rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for compositions

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comprising the full sequence of SEQ ID NO: 1, does not reasonably provide enablement for embodiments comprising only fragments of or comprising derivatives of the sequence that encode polypeptide capable of binding to murine PBSF/SDF-1. It was noted in the prior action that an amendment of claims to require that the nucleotide sequence that hybridizes to the complement of SEQ ID NO: 1 would be allowable if limited to sequences isolated from murine cells. As such an amendment has been made, the rejection is withdrawn.

***Claim Rejections - 35 USC § 102***

8. **(Prior Rejection- Withdrawn)** Claims 13, 27, and 28 were rejected under 35 U.S.C. 102(a) as being anticipated by Nagasawa et al., PNAS 93: 14725-29 (of record in the IDS of August 6, 1999). It was indicated in the prior action that the rejected claims would be allowable if drawn, similarly to claims 16, on methods requiring the heterologous expression of both hCD4 and mCXCR-4. In view of the amendment to the claims requiring such expression, the rejection is withdrawn.

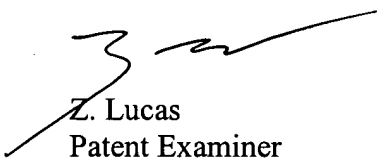
***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Z. Lucas  
Patent Examiner



JAMES HOUSEL 2/20/06  
SUPERVISORY PATENT EXAMINER  
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